

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 7, 2004

IN RE:

**TENNESSEE COALITION OF RURAL INCUMBENT
TELEPHONE COMPANIES AND COOPERATIVES
REQUEST FOR SUSPENSION OF WIRELINE TO
WIRELESS NUMBER PORTABILITY OBLIGATIONS
PURSUANT TO SECTION 251(F)(2) OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED**

**DOCKET NO.
03-00633**

**ORDER GRANTING PETITIONS FOR INTERVENTION
AND MOTION FOR SUSPENSION PENDING PROCEEDING
AND ESTABLISHING EXPEDITED PROCEDURAL SCHEDULE**

At a regularly scheduled Authority Conference held on February 23, 2004, Chairman Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, voted unanimously to require the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives ("Coalition") to amend its *Petition for Suspension* ("*Petition*") and to appoint a Hearing Officer to hear preliminary matters, rule on any petition(s) for intervention and prepare this docket for a hearing. The Coalition filed an Amended Petition for Suspension ("*Amended Petition*") on March 24, 2004, seeking a suspension of wireline to wireless number portability obligations pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended. Petitions for intervention were subsequently filed by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") and Cellco Partnership d/b/a Verizon

Wireless (“Verizon”). On April 19, 2004, the Coalition filed a *Motion for Suspension Pending Proceeding and Motion to Set Procedural Schedule* (“*Motion for Interim Suspension*”).

After reviewing the filings of the parties and the record to date in this action, the Hearing Officer hereby grants the petitions for intervention filed by the Consumer Advocate and Verizon. The Hearing Officer also grants the Coalition’s *Motion for Interim Suspension*, temporarily suspending the May 24, 2004 implementation deadline until July 23, 2004. The Hearing Officer further establishes an expedited procedural schedule so that this matter can reach a determination on the merits within the sixty (60) day interim suspension period.

BACKGROUND

Section 251(b)(2) of the Telecommunications Act of 1996¹ sets forth the duties of Local Exchange Carriers (“LECs”) with regard to local number portability (“LNP”).² The Federal Communications Commission (“FCC”) released an Order in 1996 establishing requirements for LNP³ and creating a phase-in schedule for LECs to implement LNP in the top 100 Metropolitan Statistical Areas (“MSAs”) as identified by the 1990 Census. The FCC determined that “[n]umber portability must be provided in these areas by all LECs to all telecommunications carriers, including commercial mobile radio services (CMRS) providers.”⁴ The FCC also stated “...this obligation requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA.”⁵

¹ 47 U.S.C. § 251(b)(2).

² Number Portability is defined as the ability of users of telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

³ *In the Matter of Telephone Number Portability*, FCC 96-286 (*First Report and Order and Notice of Further Notice of Proposed Rulemaking*) 11 F.C.C.R. 8352 (July 2, 1996)

⁴ *First Report and Order*, ¶ 3

⁵ *First Report and Order*, ¶ 77

The FCC's Order provides that "...in markets outside of the 100 largest MSAs...number portability should be deployed within six months of a specific request from another telecommunications provider."⁶ Additionally, the FCC delegated to the Chief of the Common Carrier Bureau the authority to waive or stay any of the dates in the implementation schedule for a period not to exceed nine months, stating that "carriers are expected to meet the prescribed deadlines, and a carrier seeking relief must present extraordinary circumstances beyond its control" to be granted an extension.⁷

In a subsequent Order issued following reconsideration, the FCC concluded that a LEC need only provide number portability in the top 100 MSAs in switches where there has been a request from another carrier.⁸ The FCC explained that it would not grant blanket exemptions from number portability requirements⁹ but that an individual LEC receiving a request for portability could apply for an extension of time on the basis of extraordinary circumstances beyond its control. In the alternative, an individual LEC could petition the appropriate state commission, as established in Section 251(f)(2) of the Act, for a suspension or modification of the requirements of Section 251(b) which applies to all LECs.¹⁰

The FCC's subsequent Order required CMRS providers, or wireless carriers, to deliver calls from their networks to ported numbers by December 31, 1998 and to offer service provider portability throughout their networks serving in the top 100 MSAs by June 30, 1999.¹¹ On September 1, 1998, the FCC's Wireless Telecommunications Bureau granted an extension of

⁶ *First Report and Order*, ¶ 82

⁷ *First Report and Order*, ¶ 85.

⁸ *In the Matter of Telephone Number Portability*, FCC 97-74 (*First Memorandum Opinion and Order on Reconsideration*) 12 F C C R 7236, ¶ 113 (March 11, 1997).

⁹ *First Memorandum Opinion and Order*, ¶ 114.

¹⁰ *First Memorandum Opinion and Order*, ¶ 115

¹¹ *First Memorandum Opinion and Order*, ¶ 2

nine months, or until March 31, 2000, for the wireless industry to develop and test standards to ensure deployment of wireless number portability.¹²

On July 26, 2001, Verizon filed a petition for permanent forbearance from LNP for covered CMRS providers citing implementation timeframes and technology issues as the basis for its request. On July 26, 2002, the FCC released its response to Verizon's petition, in which the FCC determined that a one year extension was warranted¹³ and scheduled wireless LNP to be implemented not later than November 24, 2003.¹⁴ Under the terms of this extension wireless carriers in the largest 100 MSAs must be capable of allowing end-users to port their telephone numbers, if another carrier makes a request for portability, within 30 to 180 days of the request.¹⁵ Outside the largest 100 MSAs, the carriers must be able to provide number portability within six months after receiving a request, the amount of time being dependent on the level of upgrade the carrier must perform to become LNP capable, or within six months after November 24, 2003, whichever is later.¹⁶

On November 10, 2003, just prior to the mandated November 24, 2003 wireless LNP implementation date, the FCC released its response¹⁷ to a petition for declaratory ruling filed on January 23, 2003, by the Cellular Telecommunications and Internet Association ("CTIA"). The CTIA petition had requested the FCC to provide guidance to the industry on local number portability issues relating to porting between wireline and wireless carriers. In its response,

¹² *In the Matter of Telephone Number Portability*, FCC 02-215 (*Memorandum Opinion and Order*) 17 F.C.C.R. 14,972, ¶ 4 (July 26, 2002).

¹³ *In the Matter of Telephone Number Portability*, FCC 02-215 (*Memorandum Opinion and Order*) 17 F.C.C.R. 14,972, (July 26, 2002)

¹⁴ *Memorandum Opinion and Order*, FCC 02-215, ¶ 23

¹⁵ 47 C.F.R. § 52.31(a)(1)(iv)(A)-(D) provides that LNP must be available in equipped remote switches within 30 days, in switches where software only is needed, within 60 days, in switches requiring hardware changes, within 180 days, and in areas where the switch must be replaced, 180 days.

¹⁶ *Memorandum Opinion and Order*, FCC 02-215 ¶ 31

¹⁷ *In the Matter of Telephone Number Portability*, FCC 03-284 (*Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*) 2003 WL 22658207 (November 10, 2003)

commonly referred to as the *Intermodal Portability Order*, the FCC clarified that nothing in its rules limited porting between wireline and wireless carriers or required wireless carriers to have a physical point of interconnection or numbering resources in the rate center where the number to be ported is assigned.¹⁸ The FCC found that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's coverage or service area overlaps the geographic location where the wireline carrier's number is provisioned (rate center), so long as the porting-in carrier maintains the original rate center designation following the port.¹⁹ The FCC also found that wireline carriers may not require wireless carriers to enter into interconnection agreements solely for number portability.²⁰

After release of the FCC's *Intermodal Portability Order*, several LECs petitioned the FCC requesting suspension or a waiver of the November 24, 2003 requirement to provide LNP. On January 16, 2004, the FCC issued an Order²¹ (the "*Two Percent Order*") granting a limited waiver of the wireline-to-wireless porting requirement to Two Percent Carriers²² serving within the top 100 MSAs that have not received a bona fide request for local number porting prior to May 24, 2003, or to a wireless carrier that has a point of interconnection in the rate center where the customer's wireline number is provisioned. Under this waiver, carriers have until May 24, 2004, to provide local number portability. In a February 3, 2004 Public Notice, addressing a Petition for Delegated Authority to Implement Wireless Number Portability, the FCC again clarified the number portability requirement for carriers outside the top 100 MSA stating, "Carriers are required to support number portability in areas outside the largest 100 MSAs within

¹⁸ *Memorandum Opinion and Order*, FCC 03-284, ¶ 1

¹⁹ *Memorandum Opinion and Order*, FCC 03-284, ¶ 22

²⁰ *Memorandum Opinion and Order*, FCC 03-284, ¶ 24

²¹ *In The Matter of Telephone Number Portability*, FCC 04-12 (*Order*, CC Docket 95-116), ¶ 1

²² Two Percent Carriers are defined as carriers that are servicing less than two percent of the nation's access lines in the aggregate

six months after receiving a request for number portability or by May 24, 2004, whichever is later.”²³

TRAVEL OF THE CASE

The Coalition’s Original Petition

On December 11, 2003, subsequent to the release of the *Intermodal Portability Order*, the Coalition filed its *Petition* with the Authority, requesting suspension of the FCC’s order to implement wireline to wireless portability obligations.²⁴ In the *Petition*, the Coalition argued that it has satisfied the requirements of Section 251(f)(2) of the Act,²⁵ which allows it to petition the Authority for suspension or modification of the *Intermodal Portability Order*. The Coalition also asserted that the provision of number portability in the areas served by its members will have significant adverse economic impact on telecommunications users, will be economically burdensome and is not technically feasible. The Coalition argued that the FCC’s rules establishing intermodal portability deadlines are not consistent with the operations and characteristics of its members and that it is technically infeasible for small and rural carriers to comply with the deadlines. According to the Coalition, the *Intermodal Portability Order* does not contemplate the operational factual realities and network characteristics of the Independents (two percent carriers) and other smaller carriers throughout the nation.

The Coalition also asserted that its members have not been subjected to requests for number portability from competing local exchange carriers (“CLECs”) and that Independents have not generally deployed the hardware and software in their switches to support number

²³ DA 04-269, CC Docket 95-116

²⁴ See *In re Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as Amended*, Docket No 03-00633

²⁵ 47 U.S.C. § 251(f)(2)

portability in their operations either inside or outside of the top 100 MSAs. According to the Coalition, important compensation issues associated with porting outside the rate center need to be resolved to accomplish intermodal porting numbers and routing calls outside its rate center to the ported number. The Coalition stated that there exist unresolved questions regarding the financial responsibility for significant costs that will result from implementation of the porting, routing and rating of calls to ported numbers.

The Authority issued a data request to the Coalition on January 14, 2004, requesting additional information to determine the status of the ability of each company to provide LNP.²⁶ On January 30, 2004, the Consumer Advocate and Protection Division (“Consumer Advocate”) filed a *Complaint and Petition to Intervene* based upon the assertion that Tennessee customers may be adversely impacted by an indefinite suspension of the FCC’s LNP requirements. On February 12, 2004, Nextel Communications, Inc. (“Nextel”) filed a letter in opposition to the Coalition’s *Petition* stating that the Coalition’s request for suspension was deficient and should be denied. Nextel asserted, in part, that the Coalition was attempting to delay wireline network upgrades necessary for LNP by raising “unsubstantiated claims of ‘uncertainty’ or ‘technical infeasibility’...”²⁷

On February 23, 2004, AT&T Wireless Services, Inc. (“AWS”) filed comments opposing the Coalition’s *Petition*. AWS objected to the Coalition’s request for an open-ended suspension²⁸ and argued that the *Petition* failed to include company-specific arguments in

²⁶ According to the member company responses, not all companies have received a bona fide request for portability. Because the date of a bona fide request establishes the date for implementation, there can be no deadline date prior to receipt of such a request. Thus, from the original *Petition* and the responses to the data request, it appears that not all of the members of the Coalition have received a bona fide valid request which would establish an implementation date or warrant a request for suspension

²⁷ Letter from Drinker, Biddle & Reath, LLP (February 12, 2004) p 2

²⁸ Comments of AT&T Wireless Services, Inc (February 23, 2004) p 2

violation of the FCC's Interconnection Order which requires state commissions to determine exemptions in § 251(f) "on a case-by-case basis."²⁹ Further, AWS argued that the Petition should be denied because the Coalition had failed to comply with the criteria set forth in § 251(f)(2).³⁰

The voting panel considered the Coalition's *Petition* at the Authority Conference held on February 23, 2004. Based upon the implementation stage differences between the members of the Coalition and the FCC's requirements that each company set forth specific reasons warranting suspension, the Authority determined that this matter could not be deliberated based upon the information in the original *Petition*.

The Authority ordered the Coalition to amend its *Petition* to include specific relief for each company. The Consumer Advocate was directed to refile any opposition or intervention based upon the Coalition's amended filing. At that Conference, the voting panel unanimously appointed the Authority's General Counsel or his designee to serve as Hearing Officer in this matter to work with the parties in the filing of an amended petition, to hear preliminary matters prior to the Hearing, to rule on any petition(s) for intervention and to prepare the docket for a Hearing.

The Coalition's Amended Petition

On March 24, 2004, the Coalition filed its *Amended Petition for Suspension* ("Amended Petition") of the FCC's intermodal number porting deadline of May 24, 2004. In its *Amended Petition*, the Coalition states that implementing LNP will have a significant adverse economic impact on its members' users, that additional time is needed to complete implementing LNP capability, that intermodal number portability is not technically feasible, and that a suspension of

²⁹ *Id.*, at 3

³⁰ *Id.*, at 6

the LNP May 24, 2004, deadline is warranted. The Coalition also states that the requested suspension will be consistent with the public interest, convenience and necessity.

The Coalition requests that the LNP requirements be suspended pending this proceeding and that a suspension be granted until the later of (1) the dates for each member listed on Attachment A of its Petition, (2) six months after the date by which the applicable FCC Orders (issued on November 10, 2003, and January 16, 2004) are no longer subject to appeal, or (3) six months after the date by which the TRA has provided direction to the Coalition members on the rating and routing issues raised in its *Amended Petition* and in the CMRS Arbitration Docket No. 03-00585 pending before the TRA.

According to the Coalition, the dates, as shown in Attachment A to its *Amended Petition*, reflect that most of its members need additional time to complete the tasks that are needed to become LNP capable. Even with these projected dates, the Coalition maintains that LNP is still not feasible due to a lack of interconnection arrangements required to ensure that intermodal porting and exchange of end-user traffic can be effective. In addition, the Coalition states that unlike larger LECs, the Independents (qualified two percent carriers) in general have not been required under the FCC's existing rules to deploy number porting capability and that the Coalition members specifically have not generally deployed the hardware and software in their switches to support number portability. The Coalition also states that there is "...uncertainty, confusion and continuing need for clarification with respect to [its] intermodal porting obligations" that has not been resolved by the FCC and that a "...suspension is warranted to protect the public from the inevitable confusion"... "where a number can be ported technically,

but no routing arrangements have been made by the requesting carrier to ensure that calls to the ported number can be completed on a non-toll basis.”³¹

The Coalition states that the economic burden of deployment of LNP in rural markets served by its members is significant. The Coalition has provided each member’s estimate of or actual expenditures required for the implementation of LNP, specifically, switch upgrades, software, contracts, administration costs including hiring additional personnel, testing, and training and startup expenses.

The Coalition states that the provision of intermodal (wireline to wireless) number portability is not technically feasible and that the member companies cannot fully comply with LNP requirements with respect to routing and rating of calls to ported numbers. The Coalition argues that interconnection arrangements between the member companies and wireless service providers are necessary for calls to a ported number to be properly rated, or “in the same fashion as they were prior to the port,”³² because “the interconnection obligations and technical capabilities of the Independents are limited to their local exchange networks that are geographically limited by the bounds of their incumbent service territory.”³³

Petitions for Intervention and Comments

On April 1, 2004, the Consumer Advocate filed a *Second Complaint and Petition To Intervene*. In this filing the Consumer Advocate asserts that the Coalition has not set forth sufficient evidence to support its requested suspension and that consumers may be adversely impacted by such an indefinite suspension. The Consumer Advocate states in its filing that “[t]o the extent the Independents are able to demonstrate that the dates set forth in ‘Attachment A’ to

³¹ See *Amended Petition for Suspension*, p. 8 (March 24, 2004)

³² *Amended Petition for Suspension*, p. 16 (March 24, 2004)

³³ *Amended Petition for Suspension*, p. 20 (March 24, 2004).

the Amended Petition are accurate projections for LNP technical capacity, the Consumer Advocate does not object to suspension until these dates for each independent.”³⁴

On April 15, 2004, Nextel filed its supplemental opposition to the Coalition’s *Amended Petition*, stating that the “absence of any evidence in the petition and the boiler-plate assertions about the costs of wireline to wireless LNP are plainly insufficient to warrant suspension.”³⁵ Nextel urges the Authority to dismiss the *Amended Petition*.

On April 16, 2004, Verizon filed its *Opposition to Suspension Request and Petition for Leave to Intervene*. Verizon states that it provides services in many of the counties in which the members of the Coalition operate, and that it has been required to allow customers to port their numbers out, to accept new customers with numbers ported in and that it is in compliance with number portability orders and rules. Verizon states that it has built a fully operational porting center in Murfreesboro, Tennessee, and currently employs hundreds of Tennesseans at that facility, but if the Coalition’s requests for suspension of LNP implementation are granted, Verizon may have to adjust its operations. Verizon further states that it has submitted bona fide requests to approximately 17 of the 20 members of the Coalition. In opposing the Coalition’s request for a suspension of LNP implementation, Verizon states that the Coalition has not demonstrated any reason why compliance with the FCC’s deadline would be inconsistent with the public interest. Verizon also states that the FCC has ruled that interconnection agreements for the purpose of LNP cannot be required. Verizon asserts that this matter may directly affect its operations in the State of Tennessee.

On April 19, 2004, the Coalition filed *Petitioners’ Motion for Suspension Pending Proceeding and Motion to Set Procedural Schedule* which states that a suspension pending this

³⁴ *Second Complaint and Petition to Intervene*, pp 3-4 (April 1, 2004)

³⁵ Letter from Drinker, Biddle & Reath, LLP (April 15, 2004) p 3

proceeding will not prejudice consumers as there is “almost no demand for number portability at the present time.” The Coalition submitted an Affidavit from Mr. Bruce Mottern of TDS Telecom (“TDS”) in which he attests that TDS has received three inquiries from consumers for number portability. The Coalition also pointed out that the Consumer Advocate has stated at the February 23, Authority Conference it would not oppose an interim suspension pending resolution on the merits of the Coalition’s request. On April 28, 2004, the Consumer Advocate filed a Response to Motion to Suspend stating that it “does indeed object to an extension beyond May 24, 2004.” Verizon also filed, on April 30, 2004, a response in opposition to the Coalition’s request for an interim suspension.

FINDINGS AND CONCLUSIONS

The Coalition’s Amended Petition

At the February 23, 2004 Authority Conference, the voting panel assigned to this matter determined that the original *Petition* filed by the Coalition lacked sufficient specificity as to the relief being sought by the individual members of the Coalition. In this regard, the *Petition* did not comply with the requirements of 47 U.S.C. § 251(f)(2) in seeking a suspension of the FCC’s LNP implementation date.

Under 47 U.S.C. § 251(f)(2), a petitioner must demonstrate that the suspension:

- (A) is necessary-
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome; or
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

The Coalition was directed to refile or amend the *Petition* to include the specific relief or remedy being sought by each member company of the Coalition.³⁶

On March 24, 2004, the Coalition filed its *Amended Petition* providing company-specific information and setting forth several benchmark dates which may be utilized by the Authority in determining the length of a suspension if the Authority grants a suspension on the merits of the Coalition's request.

The Consumer Advocate was permitted by the Authority at the February 23, 2004 Conference to refile its complaint and petition to intervene after the Coalition amended its filing. In its *Second Complaint and Petition to Intervene* filed April 1, 2004, the Consumer Advocate asserted that the Coalition members did not "set forth sufficient evidence to support such a suspension." Further, the Consumer Advocate stated

Unless and until a contested case is convened, with the attending rights of discovery and cross-examination, the Independents' allegations will remain untested. In the Amended Petition the Independents admit to uncertainty with respect to the summary numbers provided thus far. Without more information, the Amended Petition does not support the requisite showing that suspension "is necessary" ... "to avoid a significant adverse economic impact on users of telecommunications services generally" or "to avoid imposing a requirement that is unduly economically burdensome. ..."³⁷

In addition, the Consumer Advocate addresses the length of the requested suspension stating

Furthermore, the Independents have failed to show why a suspension for an uncertain period of time is proper. To the extent the Independents are able to demonstrate that the dates set forth in "Attachment A" to the Amended Petition are accurate projections for LNP technical capacity, the Consumer Advocate does not object to suspension until these dates for each Independent[.] However, the alternative dates for implementation by the Independents present a concern.³⁸

³⁶ Transcript of Authority Conference, pp 12-23 (February 23, 2004).

³⁷ *Second Complaint and Petition to Intervene*, p 3 (April 1, 2004)

³⁸ *Id.*, at 3-4.

The Hearing Officer **finds** that the Coalition has amended its filing to comply with the directives of the Authority and that an evidentiary hearing is necessary to determine the facts which may support the necessary elements of Section 251(f)(2). Upon reviewing the Amended Petition and its Attachment in light of the criteria set forth in Section 251(f)(2), the Hearing Officer **concludes** that the Amended Petition is sufficient to state a cause of action which may proceed to an evidentiary determination of whether each member of the Coalition can satisfy the statutory requirements for a suspension under Section 251(f)(2).

The Hearing Officer also **concludes** that the filing of the Amended Petition triggers the commencement date of the proceeding under Section 251(f)(2) such that the 180 day period for action by the Authority begins on March 24, 2004.

Petitions for Intervention

Criteria for Permitting Intervention

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

A Hearing on the merits of the Coalition's request has not been scheduled in this matter.

Consumer Advocate

On April 1, 2004, the Consumer Advocate filed its *Second Complaint and Petition to Intervene*. First, the Consumer Advocate asserts that the TRA should deny the Coalition's request for an indefinite suspension. Second, the Consumer Advocate seeks intervention, stating that it is authorized to intervene in proceedings to represent the interests of Tennessee consumers pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A). The Petition to Intervene alleges that "Tennessee customers will not be able to change their wireline telephone numbers to wireless service as envisioned by the [FCC]" if the Coalition's request for an indefinite suspension is granted.³⁹ The Consumer Advocate states that it can protect the public interest in this regard only by participating in this proceeding. No party or person has filed an objection to or opposed the Consumer Advocate's intervention request.

The Hearing Officer finds that the legal rights and interests of Tennessee consumers may be determined in this proceeding and that the Consumer Advocate's petition is timely and its intervention will not impair the orderly and prompt conduct of these proceedings. For these reasons and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer grants the Consumer Advocate's Petition to Intervene.

Verizon

Along with its opposition to the Coalition's suspension request, Verizon seeks leave to intervene in this matter. Verizon asserts that it is a CMRS provider licensed to provide services in Tennessee and, in fact, operating "certain wireless communications services and facilities throughout 94 of Tennessee's 95 counties."⁴⁰ Verizon alleges that it provides services in areas in

³⁹ See *Second Complaint and Petition to Intervene*, p. 1 (April 1, 2004).

⁴⁰ See *Opposition to Suspension Request and Petition for Leave to Intervene of Verizon Wireless*, p. 1 (April 16, 2004).

which members of the coalition operate and that, in the event rural customers seek to port their landlines to Verizon, a delay in the implementation of LNP may result in a loss of business to Verizon.

Verizon filed its petition for intervention on April 16, 2004, prior to the setting of a Hearing in this matter. No party or person has filed an objection to or opposed Verizon's intervention request.

The Hearing Officer finds that the legal rights, duties, privileges, immunities or other legal interests of Verizon may be determined in this proceeding. The Hearing Officer also finds that Verizon's petition is timely and that the interests of justice and the orderly and prompt conduct of these proceedings will not be impaired by granting intervention to Verizon.

For the above reasons, and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer grants the petition for intervention filed by Verizon.

Coalition's Request for Interim Suspension under 47 U.S.C. § 251(f)(2)

Section 251(f)(2) of the federal Telecommunications Act of 1996 permits LECs with fewer than two percent of the nation's subscriber lines to petition a state commission for suspension or modification of the requirements of Section 251 (b) or (c). Section 251(b)(2) sets forth the requirement that LECs "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]." Thus, in accordance with Section 251(f)(2), the Coalition is entitled to seek relief, in this case a suspension, from the requirements of Section 251(b)(2) put in place by the FCC. Section 251(f)(2) also provides:

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

As a part of the *Amended Petition*, the Coalition seeks an interim or temporary suspension of the FCC's requirements pending a decision by the TRA on the Coalition's request for relief. In addition, the Coalition has specifically asked for an interim suspension in its motion filed on April 19, 2004. Such an interim suspension is contemplated in Section 251(f)(2), giving the TRA the authority to suspend the FCC's requirement while the TRA is considering the Coalition's Amended Petition.

The Intervenors and Nextel have objected to the Coalition's request for a temporary suspension as well as to the ultimate relief being sought by the Coalition. The Intervenors argue that such a suspension of the May 24, 2004 implementation deadline would be against or inconsistent with the public interest. Nevertheless, the Consumer Advocate has argued that a factual determination is required before a determination is reached on the merits of the Coalition's request. Further, during the February 23, 2004 Conference, the Consumer Advocate articulated no opposition to an interim suspension pending the Authority holding a suspension proceeding to determine the merits of this matter.⁴¹

In its *Two Percent Carrier Order* issued on January 16, 2004, the FCC acknowledged that carriers with less than two percent subscriber lines may need limited additional time to upgrade their systems to be able to support LNP and adequately respond to a request for wireline-to-wireless porting. Addressing the public interest aspect of allowing additional time for carriers to overcome certain technical obstacles, the FCC stated

While we continue to believe rapid implementation of number portability to be in the public interest, we also believe it to be just as important that carriers implement and test the necessary system modifications to ensure reliability, accuracy and efficiency in the porting process.⁴²

⁴¹ Transcript of Authority Conference, pp. 17-18 (February 23, 2004)

⁴² *In the Matter of Telephone Number Portability*, FCC 04-12 (*Order*, CC Docket 95-116), ¶ 9

In the absence of a temporary suspension of the May 24, 2004 implementation requirement, that date is effective. The Hearing Officer **finds** that in order to proceed to an evidentiary hearing on the merits of the *Amended Petition* an interim suspension of some length is necessary. The Consumer Advocate indicated in its intervention request that discovery of additional information may be necessary as a part of a proceeding to develop evidence. Apart from assertions opposing the suspension relief being sought by the Coalition, the Intervenors have not put forth any specific objections to the granting of an interim suspension pending the suspension proceeding.

The Hearing Officer **concludes** that the Coalition's request for an interim suspension is reasonable and **grants** an interim suspension for a period of sixty (60) days or until July 23, 2004, for the purpose of preparing for and conducting a hearing on the merits of the *Amended Petition*.⁴³

Procedural Schedule

To assist in the preparation of this matter for a Hearing on the merits within the time period of the interim suspension, the Hearing Officer hereby establishes the following expedited schedule in this docket:

⁴³ The Hearing Officer acknowledges that Verizon filed orders issued by the Michigan Public Service Commission and the New York Public Service Commission in which those commissions denied the requests of LECs to suspend the May 24, 2004 deadline for LNP implementation. Other state commissions, however, have granted requests for temporary or interim suspensions pending hearings to determine the merits of LECs' petitions for suspension. Those states include Iowa (Order issued April 23, 2004) and Florida (Decision recorded May 5, 2004)

**All Discovery Requests Served
(one copy filed with the Authority)**

Monday, May 17, 2004

**Responses to Discovery Due
(one copy filed with the Authority)**

Thursday, May 27, 2004

Direct Testimony Due

Friday, June 4, 2004

Rebuttal Testimony Due

Friday, June 11, 2004

Hearing (Proposed)

After June 18, 2004

In addition, each member of the Coalition shall file with the Authority, no later than **May 19, 2004**, statements and documentation in support of the implement dates set forth in Attachment A of the Coalition's *Amended Petition*, which shall include: the dates of equipment or software delivery, a schedule of vender availability, statements of venders regarding timelines necessary for all required LNP implementation activities, including installation, activation, testing and training.

All filings are required to be submitted to the Authority no later than **2:00 p.m.** on the date they are due.

IT IS THEREFORE ORDERED THAT:

1. This matter proceed to a Hearing before the panel assigned to this docket to determine issues of law and fact and to develop an evidentiary record for the purpose of deciding whether to grant the relief requested by the Coalition under 47 U.S.C. § 251(f)(2).

2. The Consumer Advocate and Protection Division, Office of the Attorney General, and Verizon Wireless are hereby given leave to intervene and receive copies of any notices, orders or other documents herein.


3. The Coalition is granted an interim suspension of the FCC's LNP requirements for a period of sixty (60) days or until July 23, 2004, within which the Authority may conduct an

evidentiary hearing and determine the merits of the *Amended Petition*. The Coalition is urged to continue moving forward with the implementation of local number portability, inasmuch as the granting of this interim suspension shall not serve as a precedent or a decision on the likelihood of success on the merits of the *Amended Petition*.

4. In an attempt to move forward with a determination of the merits of the *Amended Petition* within the period of the interim suspension, the expedited procedural schedule, as set forth in this Order, is in effect until amended or modified.

5. Each member of the Coalition shall file with the Authority, no later than **May 19, 2004**, statements and documentation in support of the implement dates set forth in Attachment A of the Coalition's *Amended Petition*, which shall include: the dates of equipment or software delivery, a schedule of vender availability, statements of vendors regarding timelines necessary for all required LNP implementation activities, including installation, activation, testing and training.

6. This Order is effective upon being entered. Any party aggrieved by the action of the Hearing Officer may file an appeal with the Authority no later than fifteen (15) days from the date of this Order.



J. Richard Collier
Hearing Officer